NORTH CAROLINA

WAKE COUNTY

BEFORE THE
GRIEVANCE COMMITTEE
OF THE
NORTH CAROLINA STATE BAR
06G0496

IN THE MATTER OF	)	
	)	
Ilonka Aylward	)	REPRIMAND
Attorney At Law	)	
	)	

On April 24, 2008 the Grievance Committee of the North Carolina State Bar met and considered the grievance filed against you by J. W.

Pursuant to Section .0113(a) of the Discipline and Disability Rules of the North Carolina State Bar, the Grievance Committee conducted a preliminary hearing. After considering the information available to it, including your response to the letter of notice, the Grievance Committee found probable cause. Probable cause is defined in the rules as "reasonable cause to believe that a member of the North Carolina State Bar is guilty of misconduct justifying disciplinary action."

The rules provide that after a finding of probable cause, the Grievance Committee may determine that the filing of a complaint and a hearing before the Disciplinary Hearing Commission are not required, and the Grievance Committee may issue various levels of discipline depending upon the misconduct, the actual or potential injury caused, and any aggravating or mitigating factors. The Grievance Committee may issue an admonition, a reprimand, or a censure to the respondent attorney.

A reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused harm or potential harm to a client, the administration of justice, the profession, or a member of the public, but the misconduct does not require a censure.

The Grievance Committee was of the opinion that a censure is not required in this case and issues this reprimand to you. As chairman of the Grievance Committee of the North Carolina State Bar, it is now my duty to issue this reprimand.

You were retained to represent J.W. in an equitable distribution and alimony case. Subsequent to the hearing in the case, the judge, the Honorable Becky Tin, sent you and opposing counsel a letter dated December 9, 2005 setting out how she would be resolving the equitable distribution and alimony matters and instructing you to prepare the equitable distribution order and opposing counsel to prepare the alimony order. Judge Tin provided you and opposing

counsel with a period of time within which you could bring mathematical errors or other similar matters to her attention. After spending several hours on December 13, 2005 researching and preparing a memorandum for the judge to argue for a $20,000.00 increase in J.W.'s award, you contacted J.W. on December 14, 2005. In your e-mail, you recommend that J.W. authorize you to pursue this increase in his award and you proposed that he pay you 50% of any increase received. You demanded that he agree to this arrangement that day because Judge Tin's deadline for submission of materials was the following day. If he did not, you would not have provided this memorandum to the judge and would not have argued for the increase in the award on his behalf. This contingency fee was not in a writing signed by the client. Furthermore, the work made subject to the contingency fee was work that was part of and included in the existing representation on the equitable distribution matter, for which the hourly fee agreement was already in place. Once this fee agreement was in place, you had an obligation to represent the client's best interests regardless of whether you had struck an unfavorable bargain. An attorney may seek to renegotiate the fee agreement, but may not abandon or threaten to abandon the client to cut the attorney's losses or coerce an additional or higher fee. Any fee contract made or remade during the existence of the attorney-client relationship must be reasonable and freely and fairly made by the client having full knowledge of all material circumstances incident to the agreement. In this case, your proposed contingency fee would have gained you a higher fee than what you would have received based on your hourly rate and the time involved. You made this proposal to the client at the last minute and without providing any details regarding the work to which this new fee would pertain. Your attempt to create a contingency fee arrangement in this manner was in violation of Rule 1.5.

In the course of your representation of J.W., J.W. fell behind in paying your legal bills. In discussions regarding this outstanding obligation, J.W. communicated to you that he was not comfortable and did not want to liquidate assets that were the subject of the equitable distribution action to pay your bill. Without his consent, you sent an e-mail to Judge Tin, copied to opposing counsel, in which you inaccurately stated J.W. requested permission from the judge to liquidate assets to pay your legal bill. In this e-mail you revealed confidential information regarding your client and the representation under no applicable exception in violation of Rule 1.6, in order to further your own interest at the expense of your client. You did so again when you attached an e-mail from J.W. that included communication from J.W. about outstanding amounts owed to you as well as thoughts regarding the underlying case to your affidavit in support of your charging lien, which you filed with the court and made public record. Comment 15 to Rule 1.6 makes clear that, if an exception applies, disclosure is permitted only to the extent necessary to accomplish the specified purpose and that if disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal and other persons having a need to know it, with appropriate protective orders sought to the extent practicable. You've acknowledged there was information in the e-mail you attached to your affidavit that had nothing to do with establishing that J.W. owed you payment for legal fees. Furthermore, as noted by the Court of Appeals reviewing the Rule 11 sanctions imposed against you, charging liens are generally reserved for fees owed under a contingency fee arrangement. Thus it was not necessary to disclose information regarding whether J.W. owed you fees under the hourly billed fee arrangement either. Furthermore, you made no effort to obtain a protective order or otherwise limit access to this confidential information as described in Comment 15 to Rule 1.6. The evidence shows you impermissibly disclosed confidential client information in violation of Rule 1.6.

J.W. sent you an e-mail on January 5, 2006 instructing you to take no further action in his case, and you admit he discharged you on January 12, 2006. You notified Judge Tin of the termination of the relationship but failed to cease work in the matter. On January 13, 2006 you filed a Notice of Charging Lien and subsequently left a message for Judge Tin asking that a conference be arranged to be attended by you, Judge Tin, J.W.'s new attorney, and opposing counsel to finalize the equitable distribution order and alimony order. It appeared to Judge Tin that your primary motivation for wanting to schedule and attend this conference was to advocate for your fee, rather than to advocate for J.W. Your attempt to participate in the finalization of the equitable distribution order after your discharge and after explicit instruction from J.W. to not contact the judge is in violation of your duty under Rule 1.16(a)(3) to not represent a client and withdraw from the representation upon discharge. Additionally, you proceeded despite a conflict of interest under, and in violation of, Rule 1.7(a)(2).

As referenced above, after the termination of your representation of J.W. you filed a Notice of Charging Lien with the court in J.W.'s case. You asserted a charging lien against not only the amount you purported was the subject of a contingency fee arrangement but the entire legal fee you claimed you were owed. You had no basis in law or fact for filing this Notice of Charging Lien. In North Carolina, an attorney's charging lien is an equitable lien that gives an attorney working pursuant to a contingent fee agreement the right to recover his or her fees from a fund recovered by his or her aid. The charging lien attaches not to the cause of action, but rather to the judgment at the time it is rendered. No right to a charging lien exists if the attorney withdraws prior to settlement or judgment being entered in the case. *Mack v. Moore*, 107 N.C. App. 87, 91-92, 418 S.E.2d 685, 688 (1992). This is referred to by the Court of Appeals in the *Mack* case as the well established law in North Carolina. *Id.* In this instance, J.W. discharged you on January 12, 2006. You filed your Notice of Charging Lien on January 13, 2006. You formally withdrew as counsel of record for J.W. on February 6, 2006 by court order. The final equitable distribution order was entered on February 21, 2006. Your e-mail communications to J.W. show you understood the letter from Judge Tin in December 2005 was not the final order in the matter. Applying the North Carolina law on charging liens to this timeline, it is clear you did not have a good faith basis under law or fact to file the Notice of Charging Lien when you did. Your conduct is in violation of Rule 3.1.

You are hereby reprimanded by the North Carolina State Bar for your professional misconduct. The Grievance Committee trusts that you will heed this reprimand, that it will be remembered by you, that it will be beneficial to you, and that you will never again allow yourself to depart from adherence to the high ethical standards of the legal profession.

In accordance with the policy adopted October 15, 1981 by the Council of the North Carolina State Bar regarding the taxing of the administrative and investigative costs to any attorney issued a reprimand by the Grievance Committee, the costs of this action in the amount of $100.00 are hereby taxed to you.

Done and ordered, this the 19th day of May, 2008

James R. Fox, Chair
Grievance Committee

JRF/lr